

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

SIERRA CLUB,

Plaintiff,

VS.

ENERGY FUTURE HOLDINGS
CORPORATION and LUMINANT
GENERATION COMPANY LLC,

Defendants.

Civil Action No. 6:12-CV-cv-00108-WSS

DECLARATION OF EVA HERNANDEZ-SIMMONS

I, Eva Hernandez-Simmons, declare and state as follows:

1. My name is Eva Hernandez-Simmons, and I am of legal age and competent to give this declaration. All information herein is based on my own personal knowledge. I give this declaration for use by the Sierra Club, under penalty of perjury, in support of its Opposition to Defendants' Motion to Compel Written Discovery and the Deposition of Plaintiff Sierra Club's Corporate Representative.
2. I am a national Sierra Club staffer in the capacity of a Senior Organizing Manager for the Beyond Coal Campaign in the South-Central region of the U.S. I focus on coal use and environmental justice issues in Texas, Oklahoma, Louisiana, and Mississippi. I have worked for the Sierra Club since August of 2009 as an organizer. I am also a member of the Sierra Club, and have been a member since 2009.

3. Sierra Club is a nonprofit organization incorporated in California, with nearly 600,000 members nationwide, over 21,500 of who reside in Texas. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club's concerns encompass the exploration, enjoyment and protection of waterways, mountains, and the reduced use of coal/expanded use of clean energy. Sierra Club works with a number of environmental and human health issues related to air pollution, global climate change, and the use of coal. The state and national staff in Texas work with Sierra Club volunteers and members to carry out the Sierra Club's mission goals. Activities at the state level include, but are not limited to, transportation, coal, energy, climate change, public and private lands, outdoor activities, and environmental justice.
4. One of Sierra Club's significant conservation campaigns is the Beyond Coal Campaign. The Beyond Coal Campaign aims to reduce carbon dioxide emissions from coal-fired power plants, one of the largest sources of global warming pollution in the U.S. The campaign aims to move our economy toward a clean energy future by stopping new coal-fired plants, phasing out existing plants, and keeping U.S. coal reserves in the ground and out of international export markets. A goal of the Sierra Club is to reduce America's carbon emissions by 80% by 2050.
5. At the state level, the Sierra Club has been working to move Texas beyond coal by replacing coal with clean, renewable forms of energy like: wind, solar and increased energy efficiency that will create jobs and reduce global warming.

6. The Sierra Club has co-hosted public forums in Texas and other states to help educate the public regarding coal. These forums have been attended by thousands of people, members of the media, and political figures, often garnering significant local and national media attention.
7. I am concerned that if the Defendants, EFH and Luminant, obtain the Club's donor and membership information, it will have a chilling effect on my ability to do my job.
8. I am aware that Luminant is influential in the communities where its power plants are located. As one resident living near Luminant's Big Brown plant told the Dallas Morning News, "I think some people are afraid to speak up because they work for the coal plant or have family that does." She continued, "They're [Luminant is] so snug into the community." Another resident told the paper, that she "recollected how Luminant had threatened to shut down the plant two years ago over federal air quality standards and the rancor in the town that followed. 'People got pretty upset,' she said. 'It feels like almost everyone in the town works there.'"¹
9. Because Luminant is so prominent in the community, local Sierra Club members are often reluctant to speak out publicly against the company's plants or even identify themselves as Sierra Club members.
10. I am aware of past Sierra Club cases where members have declined to speak out or volunteer to be standing witnesses for fear of retaliation and harassment.
11. For example, I am aware of a Sierra Club member in Texas concerned about Clean Air Act violations at an industrial source who declined to speak out publicly for fear that the plant's operator would seek to get him fired from the local college where he was

¹James Osborne, *For East Texas coal belt, dread over new climate-change rules*, DALLAS MORNING NEWS (July 2, 2013).

employed. I am also aware of Club members in the Houston area who refused to get involved in a Clean Air Act citizens' suit against two refinery-chemical complexes because they were concerned that their family members would lose their jobs at the facilities as a result.

12. Another instance is when a community member in Central Texas contacted Sierra Club because of concerns about the local coal plant, and was concerned about speaking out publicly for fear of retaliation from workers and others at the plant. He was cautious to even give his name over the phone because of this fear. He is now a Sierra Club member and I am concerned that if his name is publicly released he would be harassed locally.
13. In Oklahoma, a restaurant owner rescinded an offer to host an event, after learning that the event was in support of Sierra Club's Beyond Coal Campaign that targeted a major electric company in the state.
14. I also manage an organizer in Oklahoma, and we have been working for years to identify spokespeople in the community who are against the local coal plant. While the organizer I manage has found several people who are adamantly against the coal plant because of local health issues, they will not speak out publicly because of fear of harassment. They have attended community meetings and meetings with Sierra Club staff, but will not do anything in a public nature.
15. In Sierra Club's campaign against the proposed White Stallion coal plant outside of Houston, I worked with a local wildlife biologist who in private told me many reasons why the coal plant would be detrimental to the wildlife in the area. She would not speak out publicly to her colleagues due to fear of losing her job and retaliation.

16. Sierra Club members have been subject to harassment and intimidation for expressing their political views and for being involved in Sierra Club litigation.
17. For example, when Defendants sent out a press release about idling Monticello and laying off 500 employees, I got a frightening and harassing phone call from a worker threatening to show up at my house so I could pay his phone bill if he got laid off. His wife was screaming obscenities in the background. I am concerned that if we release Sierra Club members' names publicly, then they will receive similar threats that would hinder them from being involved in cleaning up their community.
18. Another example is when I was working with community members in West Texas who did not want a coal plant built in their backyard. They spoke out against it, educating the community about the dangers of the coal plant, and their shed was shot up with a gun. They told me they are positive it was because they spoke out and that they were concerned about continuing to do so.
19. I have been in touch with another local Sierra Club member who was publically opposed to a coal plant being built in her community. She called me very upset one evening at 10pm because the coal company representative sent a threatening email to her boss and many of her colleagues. She was afraid for her job and was frightened that additional retaliation would take place.
20. I am also aware of Maria Gunnoe, a Sierra Club member in Appalachia, who has been threatened, assaulted, and harassed for her criticism of the coal industry.² In 2007, in preparation for a hearing in a Clean Water Act lawsuit, Ms. Gunnoe organized a media training for 20 local residents, some of whom were scheduled to testify with her. At the

² *Maria Gunnoe: My Mountain Story*, Earthjustice, <http://earthjustice.org/mountain-heroes/maria-gunnoe>, last accessed July 26, 2013.

community hall, more than 60 coal miners showed up and harassed Ms. Gunnoe and her neighbors, putting a stop to the training and intimidating the group. After this incident, Ms. Gunnoe's neighbors chose not to testify at the hearing, and Ms. Gunnoe was the sole community resident to do so.³

21. I am aware of a Sierra Club member in Alaska who has been intimidated and threatened for his advocacy involving a coal export facility.
22. If this court were to force disclosure of the Sierra Club's strategies in connection to the Beyond Coal and Beyond TXU Energy Campaigns, it would have a chilling effect on my work and the Club's ability to develop internal campaign strategies. Future staff discussions and other communications on strategy, campaign development, and litigation would be reduced and restricted. Disclosing the requested information would limit the Sierra Club's capacity to conduct business.
23. Disclosure of donor and membership information and communications would frustrate the Club's ability to organize itself, conduct its affairs, select its leaders and its advocacy and strategy, and it would impact the Club's decisions about how to promote its advocacy.
24. I believe disclosure of Sierra Club's donor and membership information would have a chilling effect on the Club's membership recruitment efforts, volunteer participation in Texas and across the country, and in the expression of its political views.
25. Furthermore, disclosing all information relating to "...communication in connection with the Beyond Coal and Beyond TXU Energy Campaigns...communications from Sierra Club to Sierra Club members and/or other members of the public regarding...TXU

³ *Maria Gunnoe*, The Goldman Environmental Prize, 2009, <http://www.goldmanprize.org/2009/northamerica>.

Energy...” and “...Sierra Club's strategy for forcing the closure or phase-out of Big Brown and/or Martin Lake,” would require collecting voluminous amounts of documents and information on thousands of members who have been contacted. This would present a major burden to Sierra Club and its employees.

I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed this 29th day of July, 2013 in Austin, Texas.

A handwritten signature in black ink, reading "Eva Hernandez-Simmons". The signature is written in a cursive, flowing style. The first name "Eva" is written in a larger, more prominent script, followed by "Hernandez-Simmons" in a slightly smaller, more compact script. The signature is positioned on a light-colored, possibly white, background.

Eva Hernandez-Simmons